

Section 170.-Charitable, Etc., Contributions and Gifts 26 CFR 1.170A-1: Charitable, etc., contributions and gifts; allowance of deduction. (Also Section 2522; 25.2522(a)-1.)

Charitable contributions; deductions; war veterans' organizations. Contributions to an organization, 90 percent of the membership of which is comprised of war veterans of the Armed Forces of the U.S., are deductible under section 170(c)(3) of the Code. The fact that a small percentage of members have not served in a branch of the organization from being classified as a war veterans organization. Rev. Rul 59-151 modified and superseded.

ISSUE

Are contributions made to or for the use of the veterans organization described below deductible as charitable contributions under sections 170 and 2522 of the Internal Revenue Code?

FACTS

Ninety percent of the members of an organization that is exempt from income tax under section 501(a) of the Code are war veterans of the Armed Forces of the United States. Substantially all the other members are individuals who are veterans (but not war veterans), or are cadets, or are spouses, widows, or widowers of war veterans, veterans, or cadets. The organization operates in accordance with the following purposes:

(a) Furthering, encouraging, promoting and maintaining comradeship generally among persons who are or have been members of the Armed Forces.

(b) Honoring and perpetuating the memory of deceased veterans and members of the Armed Forces and aiding and comforting their survivors.

(c) Encouraging public interest in and maintaining the ideals of the Armed Forces by sponsoring and participating in activities of a patriotic nature, and

(d) Aiding hospitalized, disabled and needy war veterans and their dependents. However, the organization does not provide insurance benefits to its members.

LAW AND ANALYSIS

Section 170(a) of the Code provides the general rule that there shall be allowed as a deduction any charitable contribution, as defined in section 170(c), payment of which is made during the taxable year.

Section 170(c)(3) of the Code includes within the term 'charitable contribution' as used in section 170 a contribution or gift to or for the use of a post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization that is organized in the United States for any of its possessions, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 2522(a)(4) of the Code allows a gift tax deduction for transfers to or for the use of posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

The term 'war veterans' means persons, whether or not present members of the United States Armed Forces, who have served in the Armed Forces of the United States during a period of war (including the Korean and Vietnam conflicts).

The fact that an organization of veterans qualifies as exempt from income tax under section 501(a) of the Code does not, of itself, mean that contributions to such organization are deductible under section 170(c)(3). For contributions to be deductible the organization must qualify as a war veterans organization within the meaning of section 170(c)(3). To qualify as a war veterans organization within the meaning of section 170(c)(3), the organization must satisfy both a membership requirement and a purposes requirement.

With respect to the membership requirement, the fact that a small percentage of the members of an organization formed as a war veterans organization have not served in the Armed Forces will not, of itself, preclude the organization from being classified as a war veterans organization under section 170(c)(3) of the Code, provided at least 90 percent of its members are war veterans and substantially all the other members are either veterans (but not war veterans), or are cadets, or are spouses, widows, or widowers or war veterans, veterans or cadets.

With respect to the purposes requirement, the organization must be organized and operated primarily for purposes that are consistent with its status as a war veterans organization.

The organization in this case has purposes that are consistent with its status as a war veterans organization within the meaning of sections 170(c)(3) and 2522(a)(4) of the Code and operates in accordance with them.

HOLDINGS

Because the organization qualifies as a war veterans

organization described in sections 170(c)(3) and 2522(a)(4) of the Code, any contributions to or for the use of the organization are deductible for purposes of sections 170 and 2522.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 59-151, 1959-1 C.B. 53, holds that if an organization is essentially a war veterans organization, the fact that a small percentage of members who have served in an established branch of the Armed Forces have not served during a period of war will not, of itself, preclude the organization from being classified as a war veterans organization under the provision of section 170(c)(3) of the Code. The positions expressed above conform with those in Rev. Rul. 59-151, except that Rev. Rul. 59-151 could be interpreted as limited the membership of veterans organizations under section 170(c)(3) solely to veterans and war veterans, and it does not quantify the 'small percentage' described therein.

Rev. Rul. 59-151 is modified and superseded.